



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

)	<u>TELECOMMUNICATIONS</u>
)	
IN THE MATTER OF THE PETITION OF)	
U.S. LEC OF PA. INC. FOR APPROVAL TO)	ORDER OF APPROVAL
PARTICIPATE IN CERTAIN FINANCING)	
ARRANGEMENTS)	
)	DOCKET NO. TF04080874

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

US LEC of Pennsylvania Inc. (US LEC or the Petitioner), a North Carolina corporation and a public utility subject to the jurisdiction of the Board of Public Utilities (the Board), by petition filed with the Board on August 23, 2004 and amended on September 27, 2004, pursuant to N.J.S.A. 48:3-7 and 48:3-9, requests nunc pro tunc approval to participate in certain debt financing arrangements of its parent corporation US LEC Corp (Parent).

Petitioner is authorized to provide local exchange and interexchange services throughout New Jersey, pursuant to Board Order of Approval dated August 18, 1999, in Docket No. TE99030180. Petitioner is a wholly owned subsidiary of US LEC Corp, a publicly-traded Delaware corporation, whose principal business is telecommunications.

Petitioner requests nunc pro tunc approval, effective September 30, 2004, for its participation in certain debt financing arrangements of its Parent, which included (1) the guarantee of certain high yield senior notes to be issued by its Parent in the aggregate principal amount of \$150 million (Notes) and (2) the grant of a security interest in substantially all of its assets to secure the guarantees of the Notes given by US LEC and all other operating subsidiaries of Parent.

US LEC did close on this transaction on September 30, 2004, whereby Parent issued notes and granted a second priority lien on substantially all of its assets. US LEC had advised the Board's Office of the Economist in advance of its intention to close prior to Board review and approval and had filed its amendment to its petition on September 27, 2004, prior to the closing.

The Notes are guaranteed by Petitioner, as well as all other domestic operating subsidiaries of Parent (the Guarantors). The Notes are secured by a second priority lien on substantially all of the assets of Parent, including the stock of US LEC, and the guarantee of each Guarantor is

¹ Commissioner Jack Alter did not participate in the deliberation of or vote on this matter.

secured by a second priority lien on substantially all of the assets of each Guarantor, including Petitioner. Commissioner Jack Alter did not participate in the deliberation of or vote on this matter.

Through a second amendment to its original petition dated October 19, 2004, US LEC also seeks approval to incur debt of up to \$10 million through a secured credit facility, capitalized leases, and/or purchase money security interests (collectively, Credit Facility). Specifically, under the Credit Facility, Parent, Petitioner and its affiliates, as co-borrowers or guarantors, may borrow, through capitalized leases, purchase money security interests and/or a secured credit facility, up to the aggregate principal amount of \$10 million. Under the Credit Facility, US LEC (and each co-borrower) may be jointly and severally liable for the obligations of the other co-borrowers. In addition, a security interest will likely be granted in substantially all of US LEC's assets (and all of the stock of Parent's subsidiaries, including US LEC, will likely be pledged) to secure the obligations of Parent as a co-borrower or guarantor under the Credit Facility. US LEC may participate in this financing within twelve (12) months of the Board's approval.

These financings will be entered into at the 6 month rate of the London Interbank Offered Rate (LIBOR) plus 850 basis points.

The proceeds from the financing arrangements are to be used to repay all indebtedness under the existing credit arrangements, fund transaction costs, provide working capital, improve or acquire telecommunications assets, finance capital expenditures, acquisitions, and for other general corporate purposes.

Petitioner, as a non-dominant telecommunications carrier, is not subject to rate of return regulation and therefore its capital structure is not a significant matter of concern to the Board. In addition, because of the highly competitive environment in which Petitioner operates, the rates charged to its customers are considered subject to market discipline and the services it offers are generally available from other carriers.

Petitioner, in accordance with N.J.A.C. 14:1-12 et seq., filed a request for confidential treatment of the term sheet submitted to the Board in conjunction with its review of this matter.

The Ratepayer Advocate hopes that the funds generated by the agreement will in fact enable US LEC to provision innovative, high quality telecommunications services to the public and thereby promote competition in the New Jersey telecommunications market to the benefit of both residential and business customers in this state. Accordingly, the Ratepayer Advocate recommends that the Board approve the petition. Nonetheless, the Ratepayer Advocate is concerned with the request for nunc pro tunc authority as such "after the fact" applications may be seen as undermining the Board's authority.

The staff's review indicates that the financing transaction is in accordance with law and that the use of the proceeds associated therewith is appropriate. Moreover, while there is no guarantee in this regard, especially given the competitive environment in which Petitioner operates, the Board is satisfied that the transactions will not have an adverse impact on Petitioner's operations in New Jersey.

After review, the Board FINDS that, except for not having obtained prior Board approval, the transaction made is in accordance with the law, is in the public interest, and approves the September 30, 2004, Petitioner to participate in the financing arrangements described herein.

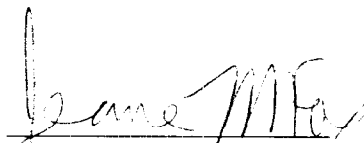
The Board further FINDS that the Petitioner's request to participate in the proposed Credit Facility to be in accordance with the law and HEREBY AUTHORIZES the Petitioner to enter into the Credit Facility within twelve (12) months of the approval of this matter.

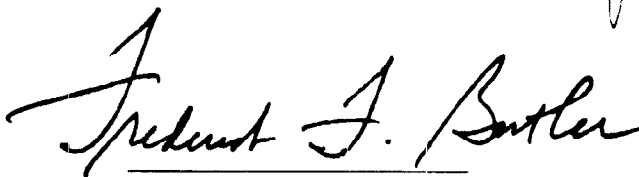
This Order is issued subject to the following provisions:


1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting Petitioner.
2. This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Petitioner.
3. Petitioner shall semiannually file statements indicating the amounts, use of the amounts and use of the credit facilities, pursuant to N.J.A.C. 14:1-5.9 (b).
4. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement shall not constitute automatic transfer of Petitioner's assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq., where applicable.

DATED: 12/2/04

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

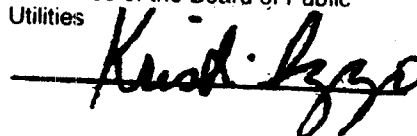

FREDERICK F. BUTLER
COMMISSIONER


CONNIE O. HUGHES
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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TF04080874

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